TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 251

PETER H. MILLER, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF FLORIDA, PETITIONER

vs.

THE STANDARD NUT MARGARINE COMPANY OF FLORIDA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 22, 1931

CERTIORARI GRANTED OCTOBER 19, 1931

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A [Caption omitted.]

1 In United States District Court for the Southern District of Florida, Jacksonville Division

THE STANDARD NUT MARGARINE COMPANY OF Florida, a Corporation, plaintiff
v.
PETER H. MILLER, INDIVIDUALLY AND AS COLLECTOR of Internal Revenue for the District of Florida, defendant
} In Equity No. ——

Bill of complaint

Filed Dec. 26, 1929

Plaintiff states as follows:

1. The plaintiff, the Standard Nut Margarine Company of Florida, is a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at Jacksonville, Florida, and is a citizen of the United States of America and the State of Florida.

2. The defendant, Peter H. Miller, is a citizen of the State of Florida and a resident of the city of Jacksonville, and is collector of internal revenue for the district of Florida.

3. Plaintiff states that this suit arises under the Constitution and laws of the United States and involves the validity, construction, application, and enforcement of the act of Congress of August 2, 1886 (24 Stat. 209), as amended by the act of May 9, 1902 (32 Stat. 193), known as the oleomargarine law.

4. That this suit involves property rights of plaintiff in excess of three thousand ($3,000.00) dollars, exclusive of interest and costs.

5. Plaintiff further states that it is engaged in the manufacture and sale in interstate commerce of a nut product known as Southern Nut Product, manufactured and sold under its own distinctive name, said name not being in imitation of the distinctive name of any other product; that said name is accompanied on the same label or brand with the name of the place where it is manufactured or produced; and that said product contains no added poisonous or deleterious ingredients. Southern Nut Product is a mixture or compound consisting of cocoanut oil, peanut oil, salt, water, and harmless coloring matter, manufactured and sold for cooking, baking, and seasoning purposes; that said product, Southern Nut Product, is packed and sold only in one pound cartons, a sample of which is attached hereto and made a part hereof; that in the said manufacture of Southern

Nut Product plaintiff buys the materials so used in manufacturing same from a great many persons and firms located outside of the State of Florida where the product is manufactured, and sells and ships said product to a great number of firms and persons (too numerous to be set forth herein), located in many States of the United States outside of the State of Florida.

6. Plaintiff further states that it has engaged in the manufacture of Southern Nut Product at the location heretofore mentioned for two years, and maintains and operates a plant and offices in the said city of Jacksonville for the conduct of said business; and that in carrying on said business it has built up a reputation and standing for fair and honest dealing with its customers and others with whom it has done business.

7. Plaintiff further states that prior to engaging in the manufacture and sale of said Southern Nut Product an action at law had been brought against one Page, a collector of internal revenue of the United States for the district of Rhode Island, for the purpose of recovering from said collector taxes paid under protest by the Higgins Manufacturing Company on a product manufactured and sold by that company known as Nut-Z-All, which product was manufactured in the same way and of the same ingredients as Southern Nut Product is manufactured by plaintiff herein, and that after hearing the evidence submitted on behalf of both plaintiff and defendant, it was held by the court that the said product Nut-Z-All was not made in imitation or semblance of butter, nor when so made calculated or intended to be sold as butter or for butter—and hence under the law was not oleomargarine and not taxable as oleomargarine. For the convenience of this court, said decision may be found in volume 297 of the Federal Reporter at page 644.

8. Plaintiff further states that as a result of said decision, Andrew W. Mellon, Secretary of the Treasury of the United States, approved, and David H. Blair, then Commissioner of Internal Revenue of the United States, published and promulgated Treasury Decision 3590, which was the text of the above decision, and further informed all concerned that Nut-Z-All had been held by the court not to be oleomargarine and not taxable as oleomargarine.

9. Plaintiff further states that in June, 1924, an organization or association of oleomargarine manufacturers known as the Institute of Margarine Manufacturers, maintaining headquarters in Washington, D. C., made inquiry of the said Commissioner of Internal Revenue, David H. Blair, and Deputy Commissioner of Internal Revenue, R. M. Estes, as to the taxability of the said product Nut-Z-All, and that said Estes made reply as follows:

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER INTERNAL REVENUE,
Washington, August 20, 1924.

Nut-Z-All.
INSTITUTE OF MARGARINE MANUFACTURERS,
J. S. ABBOTT,
Secty., 1049 Munsey Building, Washington, D. C.

SIRS: Reference is made to your letters of June 18 and July 30, 1924, relative to the alleged advertisements and sale of "Nut-Z-All" by certain retailers as butter and as a substitute for butter, and requesting this office to take steps to bring the product within the classification of oleomargarine.

The product "Nut-Z-All" was held by this office taxable as oleomargarine, but the decision was contested in the case of
3 Higgins Manufacturing Company *v.* Page (297 Fed. 644), wherein this product was held by the court to be not made in imitation or semblance of butter and not taxable as oleomargarine. The court, having held the product to be not taxable as oleomargarine, the fact that retailers advertise and sell it as butter, or as a substitute for butter, would not render them or the manufacturers liable under the internal revenue law.

It is likely that the practice about which you complain is in violation of the statute of the States in which "Nut-Z-All" is being sold, and you may be able to obtain relief desired by applying to the State officials.

Respectfully,

(Signed) R. M. ESTES,
Deputy Commissioner.

MLN.

10. Plaintiff further states that on April 1, 1927, said Andrew W. Mellon and David H. Blair, notwithstanding the aforesaid decision in the case of Higgins Manufacturing Company *v.* Page, the issuance of said Treasury Decision 3590 based thereon, and the statement contained in the above letter to the said Institute of Margarine Manufacturers that the said product Nut-Z-All was not taxable as oleomargarine, all of which were given extensive publicity throughout the trade, endeavored by Treasury Decision 4006 to again declare products similar to Nut-Z-All taxable as oleomargarine if colored to look like butter.

11. Plaintiff further states that in July, 1927, the said Higgins Manufacturing Company, of Providence, Rhode Island, filed in the United States District Court, District of Rhode Island, a petition for a temporary injunction against Frank A. Page, collector of internal revenue for the district of Rhode Island, asking the court to restrain the collector of internal revenue from collecting a tax on Nut-Z-All similar products as on oleomargarine, which injunction was granted by his honor, Judge Lowell, of the district of Massachusetts,